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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
-----X

3

STEVEN COOPER,

4

Plaintiff,

5

-against-

Case No.:
17-cv-01517

6

CITY OF NEW YORK, et al.,

7

Defendants.

8

-----X
November 4, 2019
3:07 p.m.

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Videoconference deposition of SEAN
HUGHES, taken by the Plaintiff, pursuant to
a Court Order and to the Federal Rules of
Civil Procedure, reported remotely by Rose
Marie Iacobellis, a Shorthand Reporter and
Notary Public of the State of New York.

1

2

2 APPEARANCES (ALL REMOTE PARTICIPANTS) :

3

4 RICKNER, PLLC

5 Attorneys for Plaintiff

6 233 Broadway, 2220

7 New York, New York

8 BY: ROB RICKNER, ESQ.

9

10 JAMES E. JOHNSON, ESQ.

11 CORPORATION COUNSEL OF

12 THE CITY OF NEW YORK

13 Attorneys for Defendant

14 City of New York

15 100 Church Street

16 New York, New York 10007

17 BY: CHRISTOPHER DeLUCA, ESQ.

18

19 AARON M. GOLDSMITH, ESQ.

20 Attorneys for Defendant

21 Daniel O'Connor

22 225 Broadway, Suite 715

23 New York, New York 10007

24

25

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APPEARANCES (CONTINUED) :

3

4

KARASYK & MOSCHELLA, LLP

5

Attorneys for the Defendant

6

Thomas Jacobs

7

233 Broadway, Suite 2340

8

New York, New York 10279

9

BY: JAMES M. MOSCHELLA, ESQ.

10

11

KINGS COUNTY DISTRICT ATTORNEY'S OFFICE

12

Attorney for Sean Hughes, ADA

13

350 Jay Street

14

Brooklyn, New York 11201

15

BY: JOHN CARROLL, ADA

16

17

PRESENT:

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YITZCHOK KOTKES

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STIPULATIONS

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IT IS HEREBY STIPULATED AND AGREED, by
and between counsel for the respective
parties hereto, that all objections, except
as to form, are reserved to the time of
trial.

9

IT IS FURTHER STIPULATED AND AGREED
that the deposition may be signed and sworn
to before any officer authorized to
administer an oath.

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Hughes

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SEAN HUGHES,

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called as a witness, having been first
4 duly sworn by a Notary Public of the
5 State of New York, was examined and
6 testified as follows:

7

EXAMINATION

8

BY MR. RICKNER:

9

10

Q. Please state your name for the
record.

11

A. Sean Hughes.

12

Q. What is your address?

13

14

A. 350 Jay Street, Brooklyn, New
York.

15

16

17

18

Q. ADA Hughes, my name is Rob
Rickner, I represent the Plaintiff, Steven
Cooper, in this action, and I'd just like
to you ask you a couple of questions.

19

20

Mr. Hughes, have you ever had
your deposition taken before?

21

A. No.

22

Q. Have you ever testified at trial?

23

A. No.

24

25

Q. Have you ever taken a deposition
given that you are an attorney?

1

Hughes

6

2

A. No.

3

Q. Okay.

4

I'm sure your attorney went over
5 this, but these are just a couple of ground
6 rules to help us get a nice clear
7 transcript.

8

9

10

11

12

13

14

15

The first, and you're doing a
great job of it, is please wait until my
rambling question finishes, even if you're
absolutely sure where I'm going, before you
jump in and answer, so there's a nice clear
break between what I say and you say, and
so that your attorney has a chance to
object.

16

Do you understand?

17

A. Yes.

18

Q. Can you do that for me?

19

A. Yes.

20

21

22

23

24

25

Q. And even though we're testifying
here over Zoom, in our office, these are --
the same rules apply as if you're
testifying in a court of law, meaning that
you have to tell the truth, the whole truth
and nothing but the truth. Do you

1

Hughes

7

2

understand?

3

A. I do.

4

Q. Will you do that for me?

5

A. Yes.

6

Q. And, finally, the last thing is
that even though we are on Zoom, and you
can see my hands and we can all make
gestures and nod our heads, the court
reporter cannot necessarily take that down.
So we need nice, clear verbal answers. Do
you understand?

11

A. I do.

12

Q. You're currently employed with
the Kings County District Attorney's
Office?

13

A. Yes.

14

Q. When did you start there?

15

A. I started in the fall of 2015.

16

Q. And did you start there right out
of law school?

17

A. Yes.

18

Q. Now, I'd like you to pull up the
complaint room screening sheet that I've,
hopefully, has already been provided to

1

Hughes

8

2

you. It bears the Bates number, D_00119 to
120.

4

A. Yes, I'm looking at it.

5

Q. Okay.

6

Can you --

7

MR. RICKNER: And I'd like the
court reporter to please mark this as
Exhibit 27. We're using sequential
exhibits.

11

(Whereupon, the aforementioned
complaint room screening sheet, Bates
number, D_00119 to 120, was marked as
Exhibit 27 for identification as of
this date by the Reporter.)

16

Q. Can you please identify Exhibit
27 for the record, Mr. Hughes.

18

A. This is a complaint room
screening sheet. The defendant's name in
this case was Steven Cooper, and the
screener is listed as myself, Sean Hughes.

22

Q. Now, what is the complaint room?

23

A. The complaint room is -- it's
part of the early case assessment bureau.
We -- when you're assigned there, you

25

1

Hughes

9

2

intake cases from the police and draft the
first, you know, accusatory instrument.

4

Q. And what is the early case
assessment bureau?

6

A. Principally, we screen the case,
we call the -- we're usually the first
people to call the witness, we write up
some preliminary paperwork, we write a
criminal court complaint. We also staff
the criminal court arraignments.

12

Q. So please explain to me the
intake procedure in March or April of 2016
for a case with a DAT?

15

A. So, there's a -- I wouldn't call
her specifically a chief, but there's a
woman who is in charge of the desk
appearance tickets, and they kind of just
sit in a stack.

20

DATs aren't the same priority as
a live arrest case. So because the person
is not in custody, so you kind of take the
DAT, like you pick it up to write it up
when there's not as many cases on the desk
to write it live.

1

Hughes

10

2

In a case -- a certain DAT is

3

assault DATs, those were assigned to an ADA
4 to work on not just on one shift, but if it
5 needed to be, across a few shifts.

6

Q. So the woman in charge, what's
7 her name?

8

A. Her name is Sofia, S-O-F-I-A,
9 Aitken, A-I-T-K-E-N.

10

11

12

13

Q. And would it be correct to say
that she has a collection of desk
appearance tickets that need to be
processed that she then distributes?

14

15

16

17

18

19

20

21

22

A. I mean, I -- when you say
distribute, like she doesn't assign
anything, she is not an ADA, she's kind of
like a paralegal. But I feel like she does
process them, I suppose, in the sense that
she, I don't know, maybe collects
paperwork, I couldn't specifically say what
she does. But I know she's like the point
person of DATs.

23

24

Q. Right. So let me put it another
way.

25

How do you get assigned to a

1

Hughes

11

2

specific DAT?

3

A. On a non-assault DAT, there's like a box and you walk over and you pick it up.

6

Q. So the next one up is yours?

7

A. Well, the DATs, actually, you can kind of just go through the box, because sometimes, you know, if you're looking for something that might be a little easier as a DAT to write up versus something that might be a little more -- take a little more time.

14

Q. Okay.

15

So looking at the complaint room screening sheet that was marked as Exhibit 27, is this an assault DAT?

18

A. This was an assault DAT.

19

Q. How are assault DATs assigned?

20

A. I don't recall the specific procedure, but I know that we were given -- like an assault DAT was assigned to me as it was assigned to my colleagues, and I would be, you know, charged with writing it up and packaging it up and submitting it

1 Hughes 12

2 off to eventually be arraigned.

3 Q. Do you know how you got assigned
4 to Mr. Cooper's case?

5 A. I don't recall.

11 | MR. RICKNER: Yeah, absolutely.

12 What is it? Oh, you e-mailed it to me
13 earlier, didn't you?

14 MR. CARROLL: Yes, I did.

15 MR. RICKNER: All right. So I'm
16 going to just see if I can figure this
17 out really quickly.

18 Off the record.

19 (Whereupon, an off-the-record
20 discussion was held.)

21 Q. When an assault --

22 MR. RICKNER: Withdrawn.

23 Q. DAT stands for desk appearance
24 ticket?

25 A. Yes.

1

Hughes

13

2

Q. And a desk appearance ticket is something that's provided to a criminal defendant or a potential criminal defendant, rather than processing them through Central Booking?

3

A. Yes.

4

Q. When you were assigned an assault DAT, how does the information you need to process come to you?

5

MR. CARROLL: Objection to the form.

6

Q. And to be specific, how does it come to you in March 20th or April 20th of 2016?

7

MR. CARROLL: Objection to the form. I just don't know what you mean by "come to you."

8

MR. RICKNER: Okay. Let me rephrase.

9

Q. Is it correct to say that in order to process a DAT, you need materials, right?

10

A. Yes.

11

Q. And those materials, at least

1

Hughes

14

2

initially, are provided by the NYPD to the
3 Kings County District Attorney's Office?

4

A. Yes.

5

Q. And is there a name for the
6 package of materials that comes from the
7 New York City Police Department to the
8 Kings County District Attorney's Office?

9

A. I've always just called it the
10 arrest packet, but I know it goes

11 through -- it's called LAPS, L-A-P-S.

12

Q. Do you know what LAPS stands for?

13

A. I think it's local arrest

14

processing something.

15

Q. Fair enough.

16

A. I think arrest processing is

17

definitely part of it.

18

Q. What does LAPS do?

19

A. Well, the LAPS is staffed by the
20 NYPD. They get the paperwork from the
21 arresting officer, and then give the case a
22 ready time. Then that's brought over to
23 the ECAB expediter.

24

Q. And who is the ECAB expediter?

25

A. As their role or specifically the

1 Hughes 15

2 person?

3 Q. As their role.

4 A. An ECAB expediter assigns live
5 cases.

6 Q. But for a desk appearance ticket,
7 which I gathered is not considered a live
8 case; is that right?

9 A. That's correct.

10 Q. When a potential criminal
11 defendant gets a desk appearance ticket,
12 how do the materials get from LAPS to the
13 district attorney who ultimately processes
14 it?

15 A. I mean, someone puts them into a
16 yellow envelope, and they end up in the DAT
17 box, and then one of us picks it up.

18 Q. Okay.

19 So for an arrest --

20 MR. RICKNER: Withdrawn.

21 Q. For an arrest DAT, like the one
22 depicted on Exhibit 27, you get a yellow
23 envelope?

24 A. Yeah, it's a DAT packet.

25 Q. Okay.

1

Hughes

16

2

Can you pull up this,

3

unfortunately, very fuzzy-looking exhibit,

4

Bates Stamped D_00116?

5

A. I'm looking at that.

6

MR. RICKNER: Can we please mark
7 this as Exhibit 28.

8

(Whereupon, the aforementioned
9 document Bates Stamped D_00116 was
10 marked as Exhibit 28 for identification
11 as of this date by the Reporter.)

12

Q. Can you identify Exhibit 28 for
13 the record.

14

A. That is a copy of a piece of
15 paper titled "DAT Arrest Package" with the
16 Defendant's name as Steven Cooper.

17

Q. Now, when you were talking about
18 the yellow envelope that has the arrest
19 packet, does Exhibit 28 show up on the
20 front of that envelope?

21

A. It's usually -- on DAT cases,
22 something like this would be stapled to the
23 front of the manilla envelope.

24

Q. And inside of that envelope, what
25 materials would be included for an arrest

1

Hughes

17

2

DAT?

3

MR. CARROLL: Objection to the
4 form.

5

MR. RICKNER: Withdrawn. You're
6 right.

7

8

9

Q. What would be inside the DAT
package yellow envelope in an assault DAT
case?

10

11

12

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15

A. Honestly, it depends on the
arresting officer. Generally speaking,
based on my experience, you would get an
OmniForm arrest report, an OmniForm
complaint report, maybe a complainant's
contact sheet.

16

17

18

19

20

21

Sometimes you can get vouchers
related to weapons or personal property,
narcotics. Sometimes you can get a VSA
super form, maybe a memo book, a copy of a
memo book. But, again, it depends on your
arresting officer.

22

Q. What is a BSA super form?

23

24

A. V -- as in Victor -- SA super
form.

25

Q. Okay.

1 Hughes 18

2 A. Honestly, it says the defendant's
3 name and has the officer's name on it, too,
4 with their tax ID number. And I have never
5 figured out what purpose it serves.

6 Q. Understood.

7 Would you get mugshots sometimes
8 as part of the DAT package?

9 A. What do you mean when you say a
10 "mugshot"?

11 Q. A mugshot of the defendant.

12 MR. CARROLL: Objection to the
13 form.

14 MR. RICKNER: Would you like me
15 to start over or is there a specific
16 issue --

17 MR. CARROLL: What do you mean by
18 "mugshot"? It could mean different
19 things.

20 Q. ADA Hughes, when somebody is
21 arrested by the NYPD, is the protocol to
22 take a photograph of the person who was
23 arrested?

24 A. Tt is...

25 Q. Is that photograph often referred

1

Hughes

19

2

to as a "mugshot"?

3

MR. CARROLL: Objection to the
4 form.

5

6

Q. Is that -- what would you call
the photo that was taken by the NYPD?

7

8

9

10

11

12

13

A. It kind of depends on who we're
talking about, because a mugshot, as I
know, it gets taken at bookings, at the
courthouse, and then it gets uploaded to
e-Justice, and we have to review, request
it, but that's usually after you get the
case.

14

15

16

17

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But then sometimes your arresting
officer, as part of arrest protocol, may
take a full-body shot, frontal profile view
on their department phones when someone's
back in the pens at the precinct, and then
you also collect that as part of discovery.
That usually you don't get at the DAT
stage, though.

Q. You mean that you would get that
once the case is already underway after
arraignment?

A. Yeah, that's usually -- it's --

1 Hughes 20

2 it's usually not in the DAT packet
3 pre-arraignment. That's something the
4 assigned usually has to collect.

5 Q. After you get an assault DAT
6 packet, would you collect additional
7 documents as part of processing the DAT?

8 A. I think it would depend. I don't
9 think I ever did. I mean, because at that
10 point, you're -- you really just need
11 enough information to draft a sufficient
12 accusatory instrument.

13 Q. So going back to Exhibit 27.

14 A. That was the screen sheet,
15 correct.

16 Q. Yeah, the screen sheet.

17 A. Okay.

18 Q. It says the screener is Sean
19 Hughes. That's you, right?

20 A. Yes.

21 Q. Were you the only DAT --

22 MR. RICKNER: Withdrawn.

23 Q. Were you the only ADA that
24 processed Mr. Cooper's DAT?

25 MR. CARROLL: Objection to the

1

Hughes

21

2

form.

3

You can answer.

4

I just don't know what you mean

5

by "process."

6

MR. RICKNER: He's been using the
word process.

7

Q. All right. Let's go back.

8

ADA Hughes, is there a name for
the process by which a DAT package
ultimately becomes a signed criminal
complaint that's submitted?

9

A. It's called screening.

10

Q. Okay.

11

Did any other ADA besides
yourself work on screening Mr. Cooper's
DAT?

12

A. Do you mean at my level or
whether I consulted anybody?

13

Q. Both.

14

A. I was solely responsible for
screening this case, but before I'm allowed
to submit it, it had to be signed off on by
a supervisor.

15

Q. At the time, who was your

1

Hughes

22

2

supervisor?

3

A. It would depend on the day of the week. My shift -- we had eight supervisors in ECAB, I think, at that time.

6

Q. When a complaint room --

7

MR. RICKNER: Withdrawn.

8

Q. When you're done screening a DAT, how would you go about having it approved by your supervisor?

11

A. You take the screening sheet and the complaint unsigned to the boss, and you sit down and you say this is a case, they read it.

15

If they have any questions, they might ask you a few questions. They might ask you to find out some more information. But if it's okay, then they initial it, and then you're allowed to submit it.

20

Q. Now, it says here the screening date was April 20th, 2016; is that right?

22

A. That is what the document says.

23

Q. Is that the date that you finished screening Mr. Cooper's DAT?

25

A. I don't know.

1 Hughes 23

2 Q. Would it be correct that for an
3 assault DAT, you may end up working on it
4 over multiple days?

5 A. Yes.

6 Q. Now, I'd like you to pull up the
7 complaint room tracking sheet?

8 A. I'm looking at it.

9 MR. RICKNER: I'd just like to
10 mark this as Exhibit 29.

11 (Whereupon, the aforementioned
12 complaint room tracking sheet was
13 marked as Exhibit 29 for identification
14 as of this date by the Reporter.)

15 Q. Can you please identify Exhibit
16 29 for the record.

17 A. At the top, it says, "Crimes
18 against persons DAT complaint room tracking
19 sheet." It bears the name next to
20 defendant, "Cooper, Steven." Further down,
21 it says, "Assigned ADA/Para Hughes and CW
22 Thomas Jacobs."

23 Q. And what is the purpose of
24 Exhibit 29?

25 A. It's kind of like an action

1

Hughes

24

2

sheet, so that you can write down what you
did.

4

Q. Now, I'd just like to go to the
first line underneath the section,
"Attempts to contact CW," do you see that?

7

A. Okay.

8

I see it.

9

Q. Now, "CW" means complaining

witness; is that right?

11

A. Yes.

12

Q. What is a complaining witness?

13

A. A complaining witness is a person
who alleges that a crime was committed
against them.

16

Q. Now, can you please read the
first entry underneath "attempts to contact
CW"?

19

A. Under date, it says 4/16 -- I'm
sorry, 4/6/16, time 16:00, ADA Hughes, tel
number, looks like I just wrote 1, and then
results, made contact with CW-to call CW
back, to call AO.

24

Q. And can you please explain what
that section in the result column means.

1

Hughes

25

2

A. Based on reading it, I made a notation that I successfully contacted the complainant, but for whatever reason, I'd have to call back and I made a note to myself to all the arresting officers.

3

4

5

6

7

8

9

Q. And based on this sheet, is the arresting officer Shrell?

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

A. That is the arresting officer name at the top of the sheet, but I don't have an independent recollection of who the arresting officer was?

Q. Is there typically more than one arresting officer for a case?

A. To not get like hyper technical on you. Sometimes.

Q. For an assault DAT, would it be correct to say that there's only one arresting officer?

A. Not in every case, because -- so sometimes like if you have an officer who's high on overtime, the sergeant might assign -- even though they made an arrest, the sergeant might assign the case to another officer for them to write up,

1

Hughes

26

2

almost along the lines of like overtime
measures or staffing measures. So, it's
not necessarily that one person is the
arresting officer.

6

7

8

9

10

Q. Would it be correct to say that
if the arresting officer has time, the
person that actually made the arrest would
be the arresting officer on the paperwork?

11

A. That would be fair.

12

13

14

15

16

Q. Now, can you go down to 4/14/16
and please read that entry.

17

18

19

20

21

22

23

24

25

A. "Date 4/14/16, time 21:40, ADA
Hughes, Tel No. 1, completed interview with
CW. CW to e-mail contact info of CW's
friends."

Q. And here, the CW is Thomas
Jacobs?

A. Yes.

Q. And he was going to e-mail you
contact information for his friends?

A. Yes.

Q. And the implication being that
his friends were witnesses to the incident?

A. Yes.

1

Hughes

27

2

Q. Do you know if you ever received
that e-mail?

4

A. I don't recall.

5

6

Q. If you did receive that e-mail,
would it simply go to your work inbox?

7

8

MR. CARROLL: Objection to the
form.

9

MR. RICKNER: Withdrawn.

10

11

12

Q. ADA Hughes, do you have an e-mail
address that you use for your work as an
ADA?

13

A. I do.

14

15

16

Q. If Thomas Jacobs was going to
e-mail you contact information, would it go
to that e-mail address?

17

A. Yes.

18

19

Q. Do you preserve those e-mails,
meaning saved them for a period of time?

20

21

MR. CARROLL: Objection to the
form.

22

Q. You can answer.

23

24

25

A. When I was in ECAB, I don't think
I saved e-mails. It might just sit in my
inbox for a time until the Outlook

1

Hughes

28

2

automatically does something with it.

3

Q. Now, I'd like to pull up --

4

MR. RICKNER: I would like to

5

mark this as Exhibit 30, and this is

6

the witness contact information sheet,

7

Bates Stamp D_00126.

8

(Whereupon, the aforementioned

9

witness contact information sheet, Bate

10

Stamp D_00126 was marked as Exhibit 30

11

for identification as of this date by

12

the Reporter.)

13

Q. Can you please pull that up. It

14

bears Bates Stamp D_00126 --

15

MR. CARROLL: Can we go off the

16

record for one second.

17

MR. RICKNER: Sure.

18

(Whereupon, an off-the-record

19

discussion was held.

20

MR. CARROLL: Back on the record.

21

I was just pointing out that the

22

question was whether ADA Hughes saved

23

his own e-mails, and that's up to each

24

ADA whether they save -- how they save

25

their own e-mails. I just wanted it

1

Hughes

29

2

clear that the IT department does have
3 a mechanism -- I don't know how far
4 back it goes, but I know that they are
5 able to retrieve e-mails, you know,
6 that I ask for.

7

I have asked them to retrieve
8 e-mails at times, and they haven't been
9 able to find and retrieve them. So
10 although how ADA Hughes saves them is
11 his, you know -- some people save them,
12 some people don't, there is a mechanism
13 by which they are saved for a certain
14 amount of time just by our information
15 technology department.

16

17

MR. RICKNER: Understood. Thank
you for the clarification.

18

19

(Whereupon, an off-the-record
discussion was held.)

20

21

Q. So going back to Exhibit 30, can
you identify this for the record, please.

22

23

24

25

A. At the top, it says, "Complaint
room witness contact information sheet."
There's a caption, "The People of the State
of New York against Cooper, Steven." Then

1

Hughes

30

2

there's an arrest number, K16621359.

3

Q. Now, is this a document that you would prepare?

5

A. It's generated as part of the ECAB screening program.

7

As I input contact information for witnesses into the program, if you click -- I don't remember what it's labelled as, but this is the sheet that gets printed.

12

Q. Right.

13

So, if you can just look at Exhibit 27, would I be correct in saying that you entered information into a database, and then the complaint room screening sheet is a form that's then printed out based on the information that you've entered?

20

A. I'm sorry. Can you say that to

21 me one more time?

22

Q. You identified there's a computer program that you use as part of the ECAB process?

25

A. Yes.

1

Hughes

31

2

Q. And what's the name of that
computer program?

4

A. Actually, I think it's just
called screening.

6

Q. When you enter information into
the screening program, does it then print
out the complaint room screening sheet?

9

A. Yes.

10

Q. So, you don't go through and fill
out a form that looks like Exhibit 27,
right?

13

A. Yes.

14

Q. Instead, you entered different
information --

16

MR. RICKNER: Withdrawn.

17

Q. Instead, you enter information
into the system, and then the form is
generated?

20

A. Yes.

21

Q. Okay.

22

Now, looking at Exhibit 27 and
Exhibit 30 together, is there any
additional information that's contained in
the ECAB screening program that is not

1

Hughes

32

2

reflected on these two documents taken
together?

4

MR. CARROLL: Objection to the
form.

6

Q. You can answer.

7

A. I mean, through the screening
program, we draft the complaint, but I
couldn't tell you if the way -- the way the
complaint, like it pops up in a separate
dialogue box, so I don't know if it's
actually part of the same program.

13

Q. Okay.

14

Let's take it this way. Let's
say you recorded information regarding an
interview in the ECAB screening program,
would that information be provided verbatim
on a screening sheet like Exhibit 27?

19

MR. CARROLL: Objection to the
form.

21

THE WITNESS: It depends.

22

Q. In certain instances, would you
write down statements by a witness inside
of the ECAB screening form, but it would be
printed out somewhere else?

1

Hughes

33

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A. What do you mean "printed out
somewhere else"?

4

Q. Let's be more specific. So is it
fair to say that on Exhibit 27, underneath
the double line that says "complaint
charges," there's a summary of the
allegations?

9

A. Yes.

10

Q. And this summary is based on the
documents you received in the DAT package,
along with your interviews?

13

A. Yes.

14

Q. Inside of the ECAB screening
program, would there be additional
information about underlying facts of the
case that is not included on Exhibit 27?

18

A. Like I said, the complaint
generates separately.

20

Q. Okay.

21

A. But it might be part of the same
program, it might not, but everything else
usually pops up on the ECAB sheet.

24

Q. I think you see where I'm going
with that. What I'm wondering is, that is,

1

Hughes

34

2

is there a separate set of interview notes
that you would have had with Thomas Jacobs
that isn't reflected on Exhibit 27?

5

A. No.

6

Q. Now, going back to Exhibit 30,
can you tell based on Exhibit 30 itself
whether or not you spoke to each of these
witnesses?

9

A. No.

10

MR. CARROLL: Objection to the
form.

11

Q. Okay.

12

Now, if you go down and there's
an assigned detective, do you see that?

13

A. I do.

14

Q. It says Ryan Lane?

15

A. I see that.

16

Q. Can you tell me his role in this
case?

17

A. I don't recall his role in the
case.

18

Q. Do you know Ryan Lane just
generally from your work as a district
attorney?

1

Hughes

35

2

A. No.

3

Q. Do you have any idea why Ryan
Lane was assigned as a detective to this
case?

6

7

MR. CARROLL: Objection to the
form.

8

THE WITNESS: I don't.

9

10

11

Q. Would it be correct to say that
there are no narcotics allegations
reflected in the complaint?

12

13

14

And if you'd like to look at the
complaint, I think I provided it to you,
and it was previously marked as Exhibit 23?

15

A. There's no narcotics allegations.

16

17

18

Q. Do you know why somebody from
narcotics from Brooklyn South would have
been assigned to the case, then?

19

20

MR. CARROLL: Objection to the
form.

21

MR. RICKNER: I wouldn't know.

22

Q. Okay.

23

Did you ever speak to him?

24

25

MR. CARROLL: Objection to the
form.

1

Hughes

36

2

Q. Did you ever speak to Detective
Ryan Lane regarding the charges against
Steven Cooper?

5

A. I don't recall.

6

Q. Now, underneath, there's a
section that says "other officials"?

8

A. I see that.

9

Q. Can you read, I guess, the two
letters or two sets of letters after the
colon, Lieutenant MG, maybe?

12

A. It could -- it could be
Lieutenant MG -- I mean, presuming there's
a phone number after it, that would make
sense. I first thought it looked like CT,
but then I didn't know what the letters
would mean.

18

Q. Sitting here today, do you know
what this other official was doing with
respect to this case?

21

A. I don't recall.

22

Q. Now, going back to the complaint
room screening sheet.

24

A. Okay.

25

Q. There's a section that says

1

Hughes

37

2

"reporters." Do you see that?

3

A. Yes.

4

Q. What is a reporter in this
5 context?

6

A. A reporter could be the person
7 who called 9-1-1 or somehow reported the
8 crime, whether it's to the police or maybe
9 it's the DA's action hotline or however the
10 crime got, you know, reported.

11

Q. Is it fair to say that there's
12 typically a name associated with the
13 reporter?

14

A. Yeah.

15

Q. Do you know why there isn't a
16 name included here?

17

A. Honestly, no. Sometimes the ECAB
18 program can be a little wonky, and it --
19 down the line, the assigned can always
20 request a 9-1-1 call and figure out who it
21 is. So it's not like a big deal.

22

Q. Now, going down further, there's
23 a list of three witnesses.

24

A. Yes.

25

Q. And do you know if you spoke to

1

Hughes

38

2

each of these witnesses?

3

MR. RICKNER: Withdrawn.

4

Q. Let's break them out.

5

Did you speak to Vasilis Xydias?

6

V-A-S-I-L-I-S. X-Y-D-I-A-S.

7

A. If you look further down on the screen sheet, it says "interviewed telephone," indicating that I would have spoken to this witness, but I don't have a recollection of the conversation.

12

Q. And going down further, there's a

13 witness Steve Mona. Do you see that?

14

A. Yes.

15

Q. And is it correct to say that you did not speak to Mr. Mona?

17

A. Based on this sheet, yeah, it says "no interview," and then my reason said "unavailable."

20

Q. And then going one further down, there's Thomas Jacobs?

22

A. Yes.

23

Q. And you did have an interview with him; is that correct?

25

A. Yes, it says "interview

1

Hughes

39

2

telephone."

3

Q. Do you know when that interview took place based on the documentation I put in front of you?

4

MR. CARROLL: Objection to form.

5

MR. RICKNER: Withdrawn.

6

Q. Do you know when you interviewed Thomas Jacobs with respect to the charges against Steven Cooper?

7

A. Based on the complaint room tracking sheet, I spoke to the complainant, Mr. Jacobs, on April 6th and April 14th of 2016.

8

Q. If you had spoken to him additional times, would that be reflected somewhere in these documents?

9

A. I would have probably written it down under the attempts to contact CW on the tracking sheet.

10

Q. Now, there's a section here and it says, "DAT: Def punched CW and broke CW's glasses"?

11

A. Yes.

12

Q. Does this reflect the statements

1

Hughes

40

2

that were made during the interview?

3

A. That specific line?

4

5

6

Q. No, no, no. The information that comes afterwards, but before the line where it says "reporters."

7

8

9

10

A. That section is a summary of the interviews, paperwork. It's a way for me to write out what I found to be the facts of the case.

11

12

13

Q. Based on what's written here, can you tell which witness gave you which piece of information?

14

A. No.

15

16

17

18

Q. Is the complaint room screening sheet kept in the ordinary course of the Kings County District Attorney's Office's business?

19

A. Yes.

20

21

22

23

Q. And did you make this complaint room screening sheet in the routine course of the Kings County District Attorney's business?

24

A. Yes.

25

Q. And did you make this record at

1

Hughes

41

2

or near the time of the transactions that
are detailed within it?

4

A. Not too far after, I suppose.

5

Q. Within a couple of days?

6

A. Well, you're -- the incident here
was March 20th, and by April 20th would be
the last date listed on the screening
program. So within a month.

10

11

12

13

14

Q. How differently -- did you record
the information contained in the complaint
room screening sheet near the time that you
received the information from Thomas Jacobs
and the other witness?

15

A. Yes.

16

Q. And did you create --

17

MR. RICKNER: Withdrawn.

18

19

20

21

22

Q. Now, I'd like to go back a little
bit -- go back to this paragraph, and I
think it's the second sentence from the
bottom. It says "injuries" and there's a
colon.

23

A. Okay.

24

25

Q. And it goes, "CW suffered redness
and bruising (photos)."

1

Hughes

42

2

Do you see that?

3

A. I do.

4

Q. Would you have had copies of the
photos when you screened Mr. Cooper's DAT?

5

A. Probably not.

6

Q. That would indicate that somebody
told you that there were photos available?

7

A. That's likely.

8

Q. All right.

9

Going down to --

10

MR. RICKNER: Withdrawn.

11

Q. Going to Exhibit 23, can you
identify the first page of Exhibit 23 for
the record?

12

A. I'm sorry. Which exhibit is 23?

13

Q. Oh, sorry. It's the complaint.

14

The complaint, because on the back, I have
the supporting deposition from Jacobs. I
understand those are two different
documents, I'll just refer to them as first
page, second page.

15

A. Sure.

16

So, the first page says,

17

"Criminal Court of the City of New York

1

Hughes

43

2

part APAR County of Kings," there's a
caption, "The People of the State of New
York versus Steven Cooper." On the
right-hand side, it says, "State of New
York County of Kings." The second page at
the top --

3

Q. Just the first page. I'm sorry
to cut you off. Is it fair to say that the
first page of Exhibit 23 is a charging
instrument?

4

A. Yes.

5

Q. And this is the document by which
the criminal case against Mr. Cooper
starts?

6

A. Yes.

7

Q. Now, did you sign the first page
of Exhibit 23?

8

A. Yes.

9

Q. But is it correct to say that you
did not have first-hand knowledge of the
underlying facts of the crime?

10

A. That's correct.

11

Q. You had to receive the
information from your witness interviews,

1

Hughes

44

2

right?

3

A. Yes.

4

5

6

Q. And based on the information you received, you determined which charges could be brought?

7

A. Yes.

8

9

10

Q. And you also included what the witnesses had said in this complaint itself, right?

11

A. Yes.

12

13

14

15

16

Q. So I'd like to go to the -- really, the third sentence from the bottom, but it's also the third paragraph from the bottom, and it says, "Deponent is informed by Thomas Jacobs' death."

17

A. I'm looking at it.

18

19

20

21

Q. And it says that at the above time and place, "Defendant struck informant about the face with a closed fist." Do you see that?

22

A. I do.

23

24

Q. Is the informant in this sentence Thomas Jacobs?

25

A. Yes.

1

Hughes

45

2

Q. And that means that Thomas Jacobs
told you that Defendant, Steven Cooper,
struck him in the face with a closed fist,
right?

6

A. Yes, based on the complaint.

7

Q. And moving to the second
paragraph, it says that --

9

MR. RICKNER: Withdrawn.

10

11

12

13

14

15

16

17

Q. In the second paragraph from the
bottom, the informant, Thomas Jacobs, said
that being struck by Mr. Cooper with a
closed fist caused him to suffer redness
and bruising about the face, a concussion,
to suffer substantial pain, to fear further
physical injury and to become alarmed and
annoyed?

18

A. Yes.

19

20

Q. And that was information that
Thomas Jacobs told you, right?

21

A. Based on the complaint, yes.

22

23

Q. Now, I'd like to go to the second
page of Exhibit 23.

24

A. Okay.

25

Q. And this is a supporting

1

Hughes

46

2

deposition; is that right?

3

A. Yes.

4

Q. What is a supporting deposition?

5

A. Supporting deposition is a document that we use in practice to convert a criminal court complaint into an information.

6

Q. And is it necessary to convert a criminal court complaint into an information because the charging instrument must be effectively signed or sworn to by somebody with personal knowledge?

7

A. Yes.

8

Q. And did Thomas Jacobs sign this supporting deposition under oath?

9

A. I don't know.

10

Q. Do you have any reason to believe he didn't?

11

A. I didn't draft this document.

12

Q. Okay.

13

Somebody at some point in the future would have drafted this document and effectively attached it to the complaint that you had drafted and signed?

1

Hughes

47

2

A. Yes.

3

Q. Now, going back to the first page
of Exhibit 23, would it be correct to say
that the offenses are listed roughly in
order of severity?

7

8

MR. CARROLL: Objection to the

form.

9

10

11

12

13

14

THE WITNESS: I mean, I don't

know how it does -- as to how the

program sorts it out when they're in

the same level, but it usually starts

with the higher ones, and then goes to

the lower ones.

15

16

Q. Are you familiar with the phrase

"top charge"?

17

A. Yes.

18

Q. What is the top charge?

19

20

21

A. Here, the top charges would be
assault in the third degree and criminal
mischief in the fourth degree.

22

23

Q. And what makes those the top
charges?

24

A. They are both A misdemeanors.

25

Q. And would it be correct to say

1

Hughes

48

2

that the remaining charges are B
misdemeanors?

4

MR. CARROLL: Objection to the
form.

6

THE WITNESS: No.

7

8

Q. Is attempted assault in the third
degree an A misdemeanor or a B misdemeanor?

9

A. It's a B misdemeanor.

10

11

Q. What about menacing in the third
degree?

12

A. That is a B misdemeanor.

13

14

Q. What about harassment in the
second degree?

15

A. That's a violation.

16

17

Q. Would it be correct to say that a
violation contains no jail time --

18

A. No, no.

19

20

Q. You can go to jail for a
violation?

21

A. You can.

22

23

Q. What is the maximum sentence for
a violation?

24

A. I think it's 30 days.

25

MR. CARROLL: Objection. I mean,

1 Hughes 49

2 are we asking --

3 MR. RICKNER: I've got two more
4 questions on this --

5 MR. CARROLL: I'm just asking --
6 I mean, this is something we can find
7 out from a law book, we don't need to
8 be asking --

9 MR. RICKNER: I come up with
10 three, but I still need somebody to say
11 it at trial, and my client can't do it.

12 MR. CARROLL: And can we just go
13 off the record.

14 (Whereupon, an off-the-record
15 discussion was held.)

16 Q. ADA Hughes, is it correct to say
17 that the maximum sentence for a violation
18 is 15 days in prison?

19 A. Yes.

20 Q. Is it correct to say that the
21 maximum sentence for a B misdemeanor is
22 three months in prison?

23 A. Yes.

24 Q. Is it correct to say that the
25 maximum sentence for an A misdemeanor is

1 Hughes 50

2 | one year in prison?

3 A. Yes.

4 Q. In order to be accused of the
5 charge assault in the third degree, is it
6 necessary for there to be an actual injury?

7 A. Well, I mean, we start --

10 THE WITNESS: I think you got to
11 start getting into the case law. You
12 definitely have it as hurt, but I think
13 the case law is you have to suffer
14 substantial pain, so --

15 Q. So, let me rephrase it.

16 Is it correct to say that in
17 order to be charged with assault in the
18 third degree, you have to cause substantial
19 pain?

20 A. Yes.

24 A. Correct.

25 MR. CARROLL: Off the record.

1

Hughes

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2

(Whereupon, an off-the-record
discussion was held.)

4

MR. RICKNER: So moving on. On
the record, please.

6

Q. Are you familiar --

7

MR. RICKNER: Withdrawn.

8

Q. ADA Hughes, are you familiar with
the phrase "decline to prosecute"?

10

A. Yes.

11

Q. What does that mean?

12

13

14

A. "Decline to prosecute" means that
we're not proceeding further on a case,
usually at the ECAB stage.

15

16

17

18

19

20

21

Q. Is it fair to say that if at the
ECAB stage there's a determination not to
prosecute someone, then ultimately they
won't have to go to court for those
charges, and charges won't be brought
against them, for that specific set of
allegations?

22

23

MR. CARROLL: Objection to the

form.

24

25

THE WITNESS: Can you just break
your question up a little bit for me.

1

Hughes

52

2

I'm sorry.

3

MR. RICKNER: That's fine.

4

Q. Would it be correct to say that
there are certain instances where after
listening to the complaining witness, the
district attorney decides not to bring
charges?

5

A. Yes.

6

Q. And that means that a criminal
complaint is never drafted, right?

7

A. It would be more correct to say
it's not filed.

8

Q. So it would be correct to say
that if a determination is made to decline
to prosecute, a criminal complaint is not
filed, right?

9

A. Yes.

10

Q. And, therefore, the criminal
prosecution is not set in motion, right?

11

A. Right.

12

Q. At the ECAB stage, who makes the
determination to decline to prosecute?

13

A. Ultimately, it would be a
decision signed off on by a boss. If you

1

Hughes

53

2

as the screener have an inkling that it
might be a DP, you can tell the boss and
discuss it.

5

6

Q. Would it be correct to say, then,
that the boss has the final -- makes the
final determination.

7

8

A. The boss always makes the final
say.

9

10

11

12

Q. What factors go into determining
that a case should be declined to
prosecute?

13

14

MR. CARROLL: Objection to the
form.

15

16

17

18

19

THE WITNESS: It depends.

20

21

22

23

24

25

Sometimes there's no crime. Sometimes
it's an interest of justice sort of
thing, sometimes there's an obviously
bad search.

I mean, our office, for a while,
was -- I mean, we were in the paper on
marijuana cases, we were dismissing
those in the interest of justice.

There's -- I mean, it's -- there could
be like a whole host of reasons why to

1

Hughes

54

2

DP a case.

3

Q. If a complaining witness is proven to have credibility problems, they're not telling the complete truth, would that be a reason to decline to prosecute?

4

A. I -- it could be.

5

Q. If the defendant was a victim of a crime at the hands of the complaining witness, would that be a reason to decline to prosecute?

6

A. I don't understand your question.

7

Q. Let's say there's a case where --
MR. RICKNER: Withdrawn.

8

Q. Let's make it specific.

9

Here, the allegation is in the complaint that Mr. Cooper struck Mr. Jacobs; is that correct?

10

A. Yes.

11

Q. If it came to light that Mr. Jacobs had instigated the fight, and then badly injured Mr. Cooper, would that have gone into a decision as to whether or not to decline to prosecute?

1

Hughes

55

2

MR. CARROLL: Objection to the
form.

4

THE WITNESS: That depends, I
think.

6

Q. Depends on what?

7

8

9

10

11

12

13

A. For one, it would depend on if I
knew about that, but, two, my understanding
is I -- I think this was -- it wasn't a
cross-complaint, but there was another case
based on the screening sheet that went
along with this. So there were charges on
somebody else.

14

15

16

17

18

19

20

Based on the screening sheet,
someone named Daniel O'Connor was arrested
for assaulting Mr. Cooper and the
associated arrest number. But I don't
recall if I ever wrote up that case. If it
was a DAT, it might have just been in the
bin.

21

22

Q. Right. And let me take a step
back.

23

24

25

Obviously, you can't make a
determination as to whether or not to
decline to prosecute based on information

1

Hughes

56

2

you don't get, right?

3

A. Correct.

4

5

6

7

8

9

10

Q. What I'm asking is, if you had received information that Thomas Jacobs had initiated the fight against Mr. Cooper, and then proceeded to beat him up, would that go into your determination as to whether or not to decline to prosecute had you known that information?

11

12

MR. CARROLL: Objection to the form.

13

Q. You can answer.

14

A. I mean, if I knew it at the time?

15

Q. Yes.

16

17

18

19

20

21

22

23

24

25

A. If I knew that at the time, I mean, we're kind of talking hypotheticals right now, but if someone had communicated that to me, I would have put it into the narrative or the screening sheet and discussed it with the boss, because that can go into bail factors and, you know, other stuff evaluating the case.

I don't know if I would necessarily -- because you might need more

1

Hughes

57

2

investigation by the assigned, and the role
of an ADA in ECAB is to screen the case.

3

If there's something glaring, maybe we DP
it. But otherwise, we need to get it
assigned to an ADA to dive in and
investigate.

4

Q. If someone --

5

MR. RICKNER: Withdrawn.

6

Q. If during the interviews as part
of the DAT screening it is determined that
the defendant was also the victim of a
crime, would that be investigated by the
District Attorney's Office?

7

A. Yeah, and I mean, based on my
screening sheet, there was a case, I don't
know how that happened to that case.

8

Q. Understood.

9

But it's correct to say that
based on your screening sheet, it says
Daniel O'Connor was the assailant, right?

10

A. Yes.

11

Q. If you had known that police
Lieutenant Thomas -- Ms. Jacobs was also an
assailant, would that have been

1 Hughes 58

2 investigated by the district attorney?

3 MR. CARROLL: Objection to the
4 form.

5 THE WITNESS: Yeah.

6 Q. And by putting that information
7 in the screening sheet, that flags the
8 issue for the future district attorney who
9 ultimately handles the case, right?

10 A. I mean, that's part of the reason
11 they put it in the screening sheet.

12 MR. RICKNER: And let's go off
13 the record for two minutes. I want to
14 talk to Yitzchok for a second, and then
15 maybe if I'm lucky, we can just wrap
16 this up.

17 (Whereupon, an off-the-record
18 discussion was held.)

19 Q. ADA Hughes, is there anything in
20 the complaint room screening sheet that
21 indicates that Mr. Cooper was the one who
22 made the 9-1-1 call?

23 A. No.

24 Q. If you had received that
25 information during your interviews, would

1

Hughes

59

2

you have included it in the complaint room
screening sheet?

4

A. Yes, that's likely.

5

MR. CARROLL: Off the record.

6

(Whereupon, an off-the-record
discussion was held.)

7

Q. ADA Hughes, is there anything in
Exhibit 27 that indicates that Mr. Cooper
called 9-1-1?

8

A. There is. I misspoke before. I
was thinking Thomas Jacobs in my head, but
there's a notation that Steve Cooper called
9-1-1 and stated he was robbed at gunpoint.

9

Q. Where did you receive that
information from?

10

A. I don't know.

11

Q. After the DAT is screened, the
information is provided to a different
district attorney who actually handles the
case; is that correct?

12

A. Yes. I would just note that our
practice has changed a little bit since I
was in ECAB, our office has gone largely
vertical. I don't know if it's the same

13

1 Hughes 60

2 for DATs now as it was in 2016?

3 Q. Okay.

4 Well, although I'm actually
5 interested to know that as a general
6 matter, specifically in April of 2016,
7 after the DAT screening process was
8 finished, a different district attorney
9 would ultimately take over to process the
0 case, right?

11 A. Yes.

12 Q. And that district attorney would
13 often rely on the information that was
14 obtained during the ECAB process, right?

15 A. That's fair to say. It depends
16 on the assigned ADA.

17 Q. There are instances when the
18 assigned ADA does not go back and
19 re-interview the complaining witness,
20 right?

21 MR. CARROLL: Objection to the
22 form.

1 Hughes 61

2 Q. Would you -- in your practice, do
3 you re-interview the complaining witness
4 prior to the first court appearance
5 following arraignment?

6 A. That depends.

7 MR. CARROLL: Objection to the
8 form.

9 THE WITNESS: The goal is to
10 reach a witness as soon as you can. It
11 doesn't always necessarily happen
12 before the first court date.

13 Especially in a case like a DAT where
14 nobody is in custody.

15 It's certainly different for a
16 felony matter, where someone is
17 incarcerated.

18 Q. And there can be instances where
19 the complaining witness is not
20 re-interviewed by the district attorney
21 who's handling the prosecution, until
22 several court appearances have been made,
23 right?

24 A. I would sometimes, maybe it -- it
25 really depends on your ADA, but it would

1

Hughes

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2

also depend on the responsiveness of your
witness.

4

Q. If a police officer has a history
of misconduct, would that be part of the
consideration as to whether or not to
decline to prosecute?

8

MR. CARROLL: Objection to the
form.

10

11

12

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14

15

THE WITNESS: Back in 2016, if
you knew about it, it might be a factor
in moving forward on the case. It
would depend on what the allegations of
misconduct were, whether they were
substantiated, et cetera.

16

17

18

19

20

Since then, we've -- under the
new discovery law, things have changed
a little bit about how we have access
to that information and process our
cases.

21

22

23

Q. Is it fair to say you have more
access to information than we did before
the change in 50A?

24

A. I believe so, yeah.

25

Q. But going back, if the

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Hughes

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complaining witness had credibility issues,
would that go into the decision as to
whether or not to decline to prosecute?

5

MR. CARROLL: Objection to the
form.

7

8

THE WITNESS: It could go into
that if you know that there's a
credibility issue.

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Q. So if you did know that was a
credibility issue, would that go into the
determination as to whether or not to
decline to prosecute?

MR. CARROLL: Objection to the
form.

A. If I know that a witness has a
credibility issue, then we -- I would have
to conference it with the supervisor and we
would discuss how to move the case forward
or not.

Q. And because of the credibility
issue, there is a chance that you decide
not to move the case forward and prosecute,
right?

A. It depends on the credibility

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Hughes

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issue we're talking about.

3

Q. But some credibility issues will rise to the point where you say I'm not going to prosecute this case because the witness is incredible?

4

A. That can happen, yeah.

5

MR. RICKNER: All right. Thank you very much for your time. I did think I did make my hour and a half promise deadline, unless somebody else has some questions they want to jump in on.

6

THE WITNESS: Thank you very much.

7

MR. DELUCA: I have no questions.

8

MR. MOSCHELLA: No questions.

9

MR. RICKNER: Fantastic, guys.

10

Do you want to hold on the line for just a second, and let the --

11

Off the record.

12

(Whereupon, an off-the-record discussion was held.)

13

MR. CARROLL: I want it on the record, but I'm addressing you, that

1 Hughes 65
2 you are going to send us a copy
3 pursuant to the Federal --
4 MR. RICKNER: You're preserving
5 your right to review and sign. Got it.
6 I will do so.
7 MR. CARROLL: Yes, I am. Okay.
8 Thank you.
9 Have a good day, everyone.
10 MR. RICKNER: Thank you.
11 (Time note: 4:30 p.m.)
12
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Hughes

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November 4, 2020

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ERRATA

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PAGE/LINE

CHANGE/REASON

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1 Hughes

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13 Subscribed and sworn to
14 before me this day
15 of 2020

16

17

18

19

20

21

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24

25

SEAN HUGHES

1

68

2

CERTIFICATE

3

STATE OF NEW YORK)

4

) ss.

5

COUNTY OF KINGS)

6

7

I, Rose Marie Iacobellis, a Shorthand
Reporter and Notary Public within and for
the State of New York, do hereby certify:

10

11

12

13

14

That SEAN HUGHES, the witness whose
deposition is hereinbefore set forth, was
duly sworn by me and that such deposition is
a true record of the testimony given by such
witness.

15

16

17

18

I further certify that I am not
related to any of the parties to this action
by blood or marriage and that I am in no way
interested in the outcome of this matter.

19

20

21

22

ROSE MARIE IACOBELLIS

23

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November 4, 2020

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Exhibit 29	23	Complaint room tracking sheet
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